

INFORMATION LETTER

Not for
Publication

NATIONAL CANNERS ASSOCIATION

For Members
Only

No. 691

Washington, D. C.

April 2, 1938

CONGRESS SUMMARY

House Subcommittee Tables Bill to Remove Canners' Exemption from Orders Section

Congressional action of main interest to canners the past week centered in hearings held on Tuesday and Wednesday by a subcommittee of the House Agricultural Committee on a proposal to amend the Marketing Agreements Act by making all agricultural commodities subject to the orders section of the Act. At the conclusion of the hearings the subcommittee tabled the bill (H.R.9607) because of its highly controversial character, and at the same time and for the same reason tabled a measure designed to add peanuts to the list of commodities subject to marketing orders.

The orders section of the Marketing Agreements Act also came before the Senate when the McNary-Pierce bill to include hops as a commodity to which orders may be applied was passed on Thursday. The bill will be returned to the House for concurrence in an amendment adopted by the Senate which places a two-year limitation on any orders that may be issued affecting hops.

Other legislative developments were the favorable reports filed by the Senate and House Banking and Currency Committees on companion bills (S.3735-H.R.10055), to amend the Reconstruction Finance Corporation Act, which had been introduced by Senator Glass and Representative Steagall. The Senate passed the bill on Friday.

The purpose of the proposal, according to the Senate Committee's report, is to give the R.F.C. somewhat broader powers to finance business and industry where credit is not otherwise available. The report states, in explaining the bill, that "in the case of the private business enterprise, the corporation may either purchase securities and obligations or make loans, but all such purchases and loans must be, in the opinion of the board of directors of the corporation, of such sound value, or so secured, as reasonably to assure retirement or repayment, and they may be made only in cases where the business enterprise is solvent."

The proposed extension of the R.F.C. power to make loans and security purchases would terminate on June 30, 1939. The funds of the corporation would be available to large as well as small businesses and to States, municipalities, and political subdivisions and governmental instrumentalities.

By the terms of a bill (H.R.10088) introduced on March 30th by Representative Sutphin of New Jersey, fresh fish, frozen fish, and shellfish would be included among the commodities which may be purchased by the Federal Surplus Commodities Corporation from funds appropriated each year by virtue of section 32 of the old A.A.A. Under that section a sum equal to 30 per cent of the customs receipts may be used to encourage (1) the exportation of agricultural commodities, (2) the domestic consumption of such commodities by diverting them from the normal trade channels, or (3) by

financing adjustments in the quantity of agricultural commodities planted or produced.

The Senate on Monday passed the omnibus government reorganization bill by a vote of 49 to 42 after a motion to recommit had failed by a vote of 48 to 43. On Tuesday it passed the annual appropriations for the State, Justice, Commerce, and Labor Departments, and on Wednesday the Naval appropriations bill. The appropriation bills went to conference and the reorganization bill was referred to the House Select Committee on Government Organization, which reported on Wednesday a group of four bills as an amendment to the

(Continued on page 5491)

CAN SIZE SURVEY

Association Collaborating with National Standards Bureau in Obtaining Needed Data

The Division of Simplified Practice of the National Bureau of Standards, with the collaboration of the National Canners Association, has begun a new survey of the can sizes used for the various products of the canning industry.

As reported in the INFORMATION LETTER for March 19th, Chairman Somers of the House Committee on Coinage, Weights, and Measures stated, at the conclusion of the hearings on the Sauthoff bill to fix the capacity and dimensions of cans for fruits, vegetables, and milk, that the Committee did not have sufficient data at hand for action. Later, in a letter to Mr. H. Thomas Austern, who appeared for the Association at the hearing, Chairman Somers suggested that the Association collaborate with the Bureau of Standards in a survey to get complete information as to the can sizes used for various products and the quantity of the respective products packed in each size of container.

In order that all canners might have the information presented and views expressed both by those who gave testimony and by members of the Committee, the Association is sending the report of the hearings (a book of 190 pages) to every canner. Members of the Committee, it is revealed by this report, feel that unless the industry itself takes further measures to reduce and simplify the sizes of containers, legislation will be needed to achieve that result.

The Bureau of Standards, with which the Association has collaborated for some years in a can size simplification program, is sending out a schedule calling for detailed information as to the pack of individual products in each size of container. Data will be obtained on the can sizes now used for each commodity, thus furnishing the basis for a program that will meet the industry's needs on a commodity basis.

As simplification and standardization is an industry problem, the National Association is enlisting the cooperation of all state and regional canners' organizations toward getting a complete response to the questionnaire being sent out by the Bureau of Standards.

WAGNER ACT UPHELD

In Application to Certain Employees of Canning Company

On March 28th the United States Supreme Court, by a five to two decision, approved an order issued by the National Labor Relations Board requiring a California canning company to desist from practices in violation of the Wagner Act and to reinstate with back pay certain employees who had been discharged. The opinion was written by Chief Justice Hughes who, in reliance upon the facts found by the Labor Board, stated that the company had a factory in Oakland in which fruits and vegetables were canned; that the bulk of these were grown in the State of California; and that during the peak season the company employed about 1,500 people of whom 30 were warehousemen. Of its total pack approximately 37% was shipped in interstate or foreign commerce, usually f.o.b. or c.i.f. San Francisco. The opinion reviewed the various methods of transportation by water, rail and truck used in shipping canned foods, and accepted the Labor Board's finding that "there is a constant stream of loading and shipping of products out of petitioner's plant throughout the entire year."

The Court reviewed in detail the charges of unfair labor practices in violation of the Wagner Act and the resulting stoppage of shipments from the company's warehouse to the wharves. It accepted the Board's findings that interferences with union activities had resulted in strikes and industrial unrest

"... which habitually have had the effect in the canning industry of impeding the movement of canned products in interstate and foreign commerce."

It likewise accepted the Board's findings that in 1934 and 1935 there had been 15 strikes in the canning industry, 8 of which had involved stoppages of interstate commerce because of difficulties in regard to union recognition and union activities.

The Labor Board had found that the violation of the Wagner Act had led and tended to lead to labor disputes burdening and obstructing commerce. The company contended that the manufacturing and processing in which it was engaged was a local activity and that the Board did not have jurisdiction.

In deciding that the Board did have jurisdiction, the Court first determined that the company in question "was directly and largely engaged in interstate and foreign commerce", and the fact that sales were made f.o.b. or c.i.f. California was immaterial. It then concluded that Congress had the power to make rules governing the sale of the company's products in interstate commerce as illustrated by the Federal Food and Drugs Law and the various Federal anti-trust laws. Even where an industry when separately viewed is local, the Court found that the Federal Government may regulate it if its activities affect interstate commerce. In respect to canning, it said:

"Petitioner urges that the principle is inapplicable here as the fruits and vegetables which petitioner prepares for shipment are grown in California and petitioner's operations are confined to that State. It is not a case where the raw materials of production are brought into the State of manufacture and the manufactured product is handled by the

manufacturer in other States. In view of the interstate commerce actually carried on by petitioner, the conclusion sought to be drawn from this distinction is without merit. The existence of a continuous flow of interstate commerce through the State may indeed readily show the intimate relation of particular transactions to that commerce. *Stafford v. Wallace*, 258 U. S. 495, 516; *Chicago Board of Trade v. Olsen*, 262 U. S. 1, 33. But, as we said in the *Jones & Laughlin* case, the instances in which the metaphor of a 'stream of commerce' has been used are but particular, and not exclusive, illustrations of the protective power which Congress may exercise. 'The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious actions springing from other sources.' *Id.* p. 36.

"Such injurious action burdening and obstructing interstate trade in manufactured articles may spring from labor disputes irrespective of the origin of the materials used in the manufacturing process. And the place where the manufacturer makes his sales is not controlling if the sales in fact are in interstate commerce."

The Chief Justice then reviewed a number of anti-trust cases involving conspiracies concerning coal and stone-cutting, and continued

"With respect to the federal power to protect interstate commerce in the commodities produced, there is obviously no differences between coal mined, or stone quarried, and fruit and vegetables grown. The same principle must apply, and has been applied to injurious restraints of interstate trade which are caused by the practices of manufacturers and processors. * * * The case of *Carter v. Carter Coal Company*, 298 U. S. 238, did not establish a different principle or overrule the decisions which we have cited. See *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, *supra*, p. 41."

On the question whether a specific percentage of business in interstate commerce is necessary, the Court said:

"It is also clear that where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. However difficult in application, this principle is essential to the maintenance of our constitutional system. The subject of federal power is still 'commerce', and not all commerce but commerce with foreign nations and among the several States. The expansion of enterprise has vastly increased the interest of interstate commerce but the constitutional differentiation still obtains. *Schechter Corporation v. United States*, 295 U. S. 495, 546. 'Activities local in their immediacy do not become interstate and national because of distant repercussions'. *Id.*, p. 554.

"To express this essential distinction, 'direct' has been contrasted with 'indirect', and what is 'remote' or 'distant' with what is 'close and substantial'. Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce', 'due process', 'equal protection'. In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion.

"There is thus no point in the instant in a demand for the drawing of a mathematical line. And what is reasonably

clear in a particular application is not to be overborne by this simple and familiar dialectic of suggesting doubtful and extreme cases. The critical words of the provision of the National Labor Relations Act in dealing with the described labor practices are 'affecting commerce' as defined (Sec. 2 (6)). It is plain that the provision cannot be applied by a mere reference to percentages and the fact that petitioner's sales in interstate and foreign commerce amounted to 37 per cent, and not to more than 50 per cent, of its production cannot be deemed controlling. The question that must be faced under the Act upon particular facts is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes."

After reviewing the effect of the labor dispute concerning warehousemen in the present case insofar as it resulted in stoppage of the movement of goods in interstate commerce, the Court concluded that

"It would be difficult to find a case in which unfair labor practices had a more direct effect upon interstate and foreign commerce.

"The relief afforded by the Board, in requiring petitioner to desist from the unfair labor practices condemned by the Act and to reinstate the discharged employees with back pay, was properly sustained by the Circuit Court of Appeals, and its order is affirmed."

Neither Mr. Justice Cardozo who had been ill during the argument, nor Mr. Justice Reed who had disqualified himself because the case had been in the Department of Justice while he was Solicitor General, participated in the consideration of this decision. Mr. Justice Butler dissented, and Mr. Justice McReynolds joined in his dissent, on the ground that the decision of the Supreme Court in the *Carter Coal* case was controlling. He pointed out that the Court in the present case had not specifically overruled the *Carter* case, and urged that

"The later decisions of this Court involving the power of Congress to deal with labor relations in local production do not refer to the *Carter* case. At least until this Court definitely overrules that decision, it should be followed.

"Upon the authority of that case, I would reverse the order of the circuit court of appeals on the ground that, as applied here, the Act is unconstitutional."

CONGRESS SUMMARY

(Continued from page 5489)

Senate proposal. House debate on the controversial measure began on Thursday.

On Thursday the Senate agreed to a Conference Committee report on a Senate amended House bill making a number of clarifying and administrative changes in the new general farm act. The report was received in the House the same day.

Earlier in the week the House passed the War Department appropriation bill and the Senate resolution creating a joint Congressional Committee to investigate the Tennessee Valley Authority. The Senate concurred in a House amendment to the resolution on Thursday and sent the proposal for a T.V.A. investigation to the President for his signature.

Interstate Commerce Commissioner Joseph B. Eastman appeared before the Senate Interstate Commerce Committee on

Monday during a hearing on the long-and-short-haul bill and stated that all nine members of the Commission were opposed to any change in the fourth section of the Interstate Commerce Commission Act except the elimination of the so-called equidistant clause. He said that Commissioners McNamany and Lee oppose even that change. It will be recalled that the long-and-short-haul bill (S.1356-H.R.1668) passed the House last April. Hearings before the Senate Committee have been in progress during the last few weeks.

A report by the Senate Finance Committee on the House Revenue bill of 1938 probably will not be made before another week. Proposed excise taxes on imported canned beef were voted down by the Committee on Tuesday along with the proposed increased duty on canned pork which had been voted into the bill by the House.

After weeks of hearings and Committee discussion the House Interstate Commerce Committee on Thursday voted adversely, 14 to 7, on the McCarran bill (S.69) limiting train lengths to 70 cars.

Hearings are scheduled for April 6th by a House Agricultural subcommittee on a proposed bill (H.R.9846) which was recently introduced by Representative Coffee of Nebraska to regulate interstate and foreign commerce in seeds. The bill would require, on seed packages of 8 ounces or more shipped in interstate commerce, a label showing the kind, variety, and origin of the seeds, the percentage and kind of weed seeds and other seeds present, the percentage of hard seeds, and other like factors. The bill would also provide for the confiscation of adulterated seeds and would prohibit false advertising of seeds. The proposal supersedes a bill introduced last August by Representative Coffee on which a subcommittee hearing was recently held.

No action was recorded on wage and hour or food and drug legislation up to the time the INFORMATION LETTER went to press.

ALASKA FISHERIES AGREEMENT

Japan Will Not License Vessels for Salmon Fishing in Bristol Bay Area

Assurances from the Japanese Government that it will take measures for prevention of salmon fishing activities of Japanese vessels in the off-shore waters of Alaska were made public by the State Department on March 25th. At the same time, the Department announced that the U. S. Bureau of Fisheries and the Coast Guard will continue to be charged with the duty of observing fishing activities in Alaskan waters.

The announcement with respect to the assurances from the Japanese Government stated:

As a result of discussions between the American Government and the Government of Japan in regard to the salmon fishing activities of Japanese nationals in the off-shore waters of Alaska, especially in the Bristol Bay area, reported during the past fishing season, the Japanese Government has given, without prejudice to the question of rights under international law, assurances as follows: (1) that the Japanese Government is suspending the three-year salmon fishing survey which has been in progress since 1936 in the waters in question; (2) that inasmuch as salmon fishing by Japanese vessels is not permitted without licenses from the Japanese Government and as the Government has been refraining from issuing such licenses to those vessels which desired to proceed to the

Bristol Bay area to fish for salmon, it will, on its own initiative, continue to suspend the issuance of such licenses; that in order to make effective this assurance the Japanese Government is prepared to take, if and when conclusive evidence is presented that any Japanese vessels engage in salmon fishing on a commercial scale in the waters in question, necessary and proper measures to prevent any such further operations.

The American Government appreciates these assurances which the Japanese Government has given in the spirit of collaboration in the efforts of the American Government to conserve and protect the Alaskan salmon fishery resources and is gratified that discussions have been conducted by the two governments concerned in a friendly manner.

In view of the above assurances it is evident that if ever Japanese vessels, which were present in the waters in question to engage in crab fishing or in production of fish meal, caught salmon in commercial quantities in the past, such fishing was conducted without the knowledge of the Japanese Government.

Furthermore, these assurances of the Japanese Government are regarded as regulating the situation until such time as the problems involved may call for, and circumstances may render practicable, the taking of other measures.

With reference to the continued observance of fishing activities in Alaska water, the State Department announced:

The American Government will continue to give constant and practical attention to the question of the Alaska fisheries and the question of ways and means to ensure the protection and perpetuation of the highly important food resource and industries involved. To this end the fullest possible collaboration of the appropriate agencies of the Government will be utilized. In accordance with this objective, and for the general purpose of removing cause for apprehension on the part of American fishing interests, the Bureau of Fisheries and the Coast Guard will continue to be charged with the duty of observing fishing activities in Alaskan waters.

In connection with its announcement of the understanding reached with the Japanese Government, there was also made public the following summary of a statement made on November 22, 1937, by the American Government to the Japanese Government:

Beginning in 1930, and in every year since then, there have been present in the Bristol Bay area of western Alaska during the salmon fishing season Japanese fishing fleets made up of floating canneries and auxiliary vessels varying in type from small motorboats to diesel-powered trawlers. As long as the activities of these vessels were confined to the taking of crabs which abound in the Bering Sea they gave the American Government no cause for serious concern. Recently, however, evidence has accumulated which indicates that the Japanese fishing vessels operating in Bristol Bay are engaging in salmon fishing, thus raising the question of the protection and perpetuation of the salmon resources in these and other Alaskan waters.

In this connection the following trend of events is noteworthy: In 1936 the Japanese Government announced that a three-year fishing survey of the salmon resources of Bristol Bay would be undertaken. Two years of the survey have been completed and a third year will carry it through the 1938 fishing season. The regular appearance in Bristol Bay of the fishery survey vessels, coupled with the operations of Japanese fishing fleets, has caused deep concern among large sections of the American public with regard to the object and significance of such activities.

Now reports from reliable sources have become increasingly numerous that Japanese fishing vessels operating in

Bristol Bay are beginning to intercept the salmon runs of these waters. Such reports are becoming more and more insistent and reliable, and during the past season their authenticity has been supported by impressive affidavits, and by actual photographs of the fishing operations in question.

The American Government has understood from assurances given by the Japanese Government to the American Embassy at Tokyo that no licenses were being granted to Japanese fishing vessels to fish for salmon in the Bristol Bay area. Nevertheless evidence which continues to reach the American Government raises a strong presumption that Japanese nationals have actually begun salmon fishing on a substantial scale in the waters in question. The fact of such fishing being without the authority of the Japanese Government renders it of no less concern to the affected American interests. The persistence by Japanese nationals in such fishing operations in Alaskan waters would inevitably cause, among American interests, the gravest anxiety for the future of the salmon fisheries with which is inseparably joined the employment and economic welfare of large sections of the American people.

The American Government must also view with distinct concern the depletion of the salmon resources of Alaska. These resources have been developed and preserved primarily by steps taken by the American Government in cooperation with private interests to promote propagation and permanency of supply. But for these efforts, carried out over a period of years, and but for consistent adherence to a policy of conservation, the Alaska salmon fisheries unquestionably would not have reached anything like their present state of development.

The laws enacted by Congress for the protection of the fisheries of Alaska have especially provided for the perpetuation of the salmon resources by requiring an escapement for breeding purposes of at least fifty per cent of the runs. To assure such escapements, the fishing laws provide for weekly closed periods, and prohibit commercial salmon fishing at the mouths of all but the larger Alaska salmon streams. The Secretary of Commerce is authorized to fix the size and character of nets, boats, and other equipment used in salmon fishing, to limit the catch of fish, and to regulate the length of the fishing season. In practice the season is limited to approximately one month and fishing equipment to the simplest varieties, but Japanese nationals fishing in Bering Sea appear to be without restrictions as to season or equipment. The effect of these measures of conservation has been not only to maintain normal production from the Alaska salmon fisheries but to raise the salmon pack in recent years to the highest levels in the history of the industry. Conservation measures have also included biological surveys, the development of hatcheries, supervisory patrols, and the maintenance of special facilities for the conduct of these activities. The cost of these conservation measures to the American Government over the past ten years has averaged annually the substantial sum of \$358,000.

The cost of the extensive efforts made by the Government to regulate salmon fishing and to perpetuate the supply of salmon has been borne by the American people, and not infrequently American fishermen have suffered loss of employment and income as a result of the various restrictions imposed. Because of such sacrifices and the part that American citizens have played in bearing the cost of conserving and perpetuating the salmon resources, it is the strong conviction and thus far unchallenged view on the part of millions of American citizens on the Pacific Coast interested in the salmon industry and on the part of the American public generally that there has been established a superior interest and claim in the salmon resources of Alaska.

Large bodies of American citizens are of the opinion that

the salmon runs of Bristol Bay and elsewhere in Alaskan waters are an American resource; that the salmon fisheries relate to and are linked with the American continent, particularly the northwest area; and that for all practical purposes, the salmon industry is in fact a part of the economic life of the Pacific northwest coast. The fact that salmon taken from waters off the Alaskan coast are spawned and hatched in American inland waters, and when intercepted are returning to American waters, adds further to the conviction that there is in these resources a special and unmistakable American interest.

The Bristol Bay red salmon spawn in the tributary rivers and lakes of the adjacent region; the young hatch and remain in their fresh water habitat for one or two years and then migrate to sea. After the seaward migration the salmon return in two or three years to their native streams where they spawn and die. It is during the spawning migration that salmon are exposed to commercial fishing, and the need for conservation measures arises.

In the principal Alaska fishing areas, and particularly in Bristol Bay, salmon appear in runs near the surface of the water and, in large part because of the shallowness of these waters, are subject to capture chiefly after they have passed from the open ocean to the continental shelf. The continental shelf, extending for a considerable distance from shore, thus becomes a kind of bridge between the deep sea and the inland rivers and lakes where salmon spawn.

American fishermen are aware that salmon fishing operations can be successfully conducted in the comparatively shallow off-shore area of certain Alaskan waters; and that by using motor-powered vessels, long and deep fishing nets, and special seines the per capita catch of salmon may be greatly increased. The prospect of the use of these more effective methods by Japanese nationals engaging in off-shore fishing in Alaskan waters, while similar methods are denied to American fishermen, has provoked among American citizens expressions of serious concern and resentment. It is clear to all that if foreign nationals are permitted to carry on fishing operations off the shores of Alaska, the conservation efforts of the American Government would in a comparatively short period be completely nullified, whatever the intentions of those engaged in such fishing operations. Such an eventuality would be all the more deplorable for the reason that no conceivable economic gain would compensate the nationals of Japan for the probable destruction, however unintentional, of resources developed through the general efforts of American citizens.

The economic welfare of the Pacific Coast and the perpetuation of the salmon industry are peculiarly interdependent. Employees engaged in the fisheries and the capital invested in them come largely from the states of the Pacific northwest. The Alaska salmon industry in turn has been developed from a single cannery producing 12,500 cases in 1878 to an industry which in 1936 comprised 117 modern canneries, employed 25,000 persons, and packed approximately eight and one-half million cases of salmon. Bristol Bay operations began with an experimental pack of 400 cases, and by 1936 twenty-four canneries were in operation; 8,000 persons were employed, and the salmon packed in 1936 amounted to one and one-half million cases.

The Alaska salmon industry is not only of importance in itself but has had and continues to have a direct and important influence upon allied and related industries, in which many thousands of American citizens are employed. Shipbuilders, transportation companies, insurance companies, banks, and producers of marine supplies and fishing equipment on the Pacific Coast, have predicated their investments and operating plans on the expectation of normal levels of

production in the salmon industry. It is reliably estimated that the Alaska canned salmon industry as a whole annually pays to steamship companies for the handling of passengers and freight approximately \$3,500,000, pays about \$7,500,000 for canning materials, and expends roughly \$15,000,000 in taxes and for supplies incident to the operation of the salmon industry. The manufacture of supplies and equipment for the fishing industry contributes substantially to employment and industrial enterprise not only in the Pacific Coast area but in widely separated regions of the country.

The interest of the residents of Alaska in the adjacent fishing waters is also real and vital. Upon the maintenance of a prosperous salmon fishing industry depends the entire fiscal and economic welfare of the Territory of Alaska. About 80 per cent of the public revenues are derived from the salmon fishing industry. It is clear therefore that not only expenditures for the ordinary functions of the Government of Alaska but also funds for the maintenance of its school system and public institutions depend upon the perpetuation of the salmon resources of Alaskan waters. It is also an important fact that Alaska's trade with the United States is confined to water transportation, and the facilities upon which such intercourse is based are indirectly dependent upon the stability and prosperity of the salmon industry.

The views hereinbefore expressed are strongly supported by members of Congress, the Delegate to Congress from the Territory of Alaska, a large section of the American press, and business interests and residents of the Pacific Coast generally.

The American Government is confident that the Japanese Government will realize the seriousness of the problem involved in this situation and the urgency of there being taken early and effective action to dispose of it. The American Government also believes that any solution or arrangement arrived at for the protection of Alaska salmon resources should cover not only the Bristol Bay area but also include and afford protection to all principal American salmon fishing waters adjacent to the Territory of Alaska. The emphasis which has been placed in this statement upon the situation in Bristol Bay arises from the fact that the activities of Japanese fishing vessels have been chiefly observed there; it should not be inferred for this reason that a similar situation in other Alaskan waters would be of less concern to American fishing interests.

Having in mind the high importance of the Alaska salmon fisheries as an industry fostered and perpetuated through the efforts and economic sacrifices of the American people, the American Government believes that the safeguarding of these resources involves important principles of equity and justice. It must be taken as a sound principle of justice that an industry such as described which has been built up by the nationals of one country cannot in fairness be left to be destroyed by the nationals of other countries. The American Government believes that the right or obligation to protect the Alaska salmon fisheries is not only overwhelmingly sustained by conditions of their development and perpetuation, but that it is a matter which must be regarded as important in the comity of the nations concerned.

Sardine Production in Chosen

Production of canned tomato sardines in Chosen in 1937 is estimated at 100,000 cases (48 15-ounce cans to the case) as compared with an estimated production of 240,000 cases in 1936 and an actual production of 158,469 cases in 1935. Exports from Chosen in 1937 totaled 41,125 cases.

CANNED FOOD EXPORTS AND IMPORTS

Canned food exports in February fell considerably below those of the corresponding month of 1937, the largest declines occurring in fruits and fish. Asparagus, apricots, fruits for salad, peaches, pears, salmon and sardines were the individual items showing the greatest relative decrease. The import trade also fell off, with the largest declines in crab meat, tuna, and sardines. The following table, compiled from records of the Department of Commerce, furnishes figures for the month of February and the first two months of 1938 as compared with the preceding year:

EXPORTS	Feb., 1937		Feb., 1938		Jan.-Feb., 1937		Jan.-Feb., 1938	
	Pounds	Value	Pounds	Value	Pounds	Value	Pounds	Value
Canned meats, total.....	1,696,362	504,486	1,337,241	484,897	2,774,001	856,728	2,470,368	897,802
Beef, corned, roast, boiled, hash, hamburger.....	115,633	23,057	67,007	24,544	148,556	32,160	115,029	37,121
Beef, other.....	364,042	102,333	160,936	49,030	533,563	157,770	331,602	112,984
Pork.....	946,967	312,430	949,578	370,948	1,593,738	542,249	1,669,467	660,638
Sausage.....	125,803	31,175	80,641	23,941	276,174	73,605	177,734	50,256
Other.....	143,917	35,491	79,079	16,434	221,970	50,944	176,536	36,803
Canned vegetables, total.....	5,370,638	568,898	2,360,833	242,953	7,327,843	751,300	6,031,866	581,271
Asparagus.....	2,963,909	402,998	676,799	106,488	3,463,914	479,150	1,729,734	271,543
Baked beans and pork and beans.....	520,075	24,940	372,274	16,717	1,071,329	53,055	996,732	42,870
Corn.....	122,705	10,080	238,563	18,513	250,194	21,287	444,836	35,024
Peas.....	454,269	26,883	225,190	20,248	581,422	36,400	781,699	59,586
Soups.....	305,169	26,778	209,954	21,498	471,338	44,224	387,963	40,238
Tomatoes.....	422,079	22,763	92,647	5,830	480,683	26,623	220,566	12,906
Tomato paste.....	29,284	3,000	97,188	6,863	131,829	12,701	366,604	19,642
Tomato juice.....	150,430	12,025	144,056	10,825	207,808	16,601	374,988	25,140
Other.....	402,718	39,431	304,162	35,971	669,326	61,259	728,744	74,322
Condensed milk.....	261,246	30,279	471,565	45,791	435,034	47,406	695,357	67,096
Evaporated milk.....	2,010,042	141,858	1,699,017	119,777	3,909,184	285,668	4,207,243	301,805
Canned fruits, total.....	57,537,227	4,112,518	21,791,147	1,612,903	62,743,790	4,449,600	51,967,137	3,791,860
Apples and apple sauce.....	4,290,669	203,165	1,274,046	55,177	4,616,089	218,729	2,202,136	101,906
Apricots.....	3,353,705	246,978	1,130,191	85,109	3,466,824	256,448	3,231,356	233,204
Berries, other.....	231,992	19,326	61,493	7,825	255,865	23,715	140,364	16,027
Cherries.....	300,228	32,459	154,529	18,278	326,921	35,983	504,088	55,918
Fruits for salad.....	7,801,986	853,289	1,961,506	217,897	7,969,601	872,174	4,367,384	494,944
Grapefruit.....	9,778,227	473,468	5,985,532	395,040	12,741,317	641,023	12,978,084	843,211
Loganberries.....	431,644	36,920	6,035	699	432,076	36,980	60,496	5,279
Peaches.....	1,679,664	855,998	3,417,350	259,232	12,059,339	886,818	9,743,125	681,305
Pears.....	16,029,479	1,102,019	6,381,783	436,546	16,468,962	1,134,786	16,168,659	1,115,587
Pineapple.....	12,544,465	189,718	1,153,637	107,379	3,225,240	236,050	1,967,277	183,570
Prunes.....	243,919	20,658	85,630	10,011	269,996	23,359	239,703	21,767
Other.....	851,249	78,520	179,415	19,710	911,560	83,535	364,465	39,142
Canned fish, total.....	22,846,203	2,835,606	7,043,642	726,676	24,364,277	2,991,453	16,010,692	1,673,833
Salmon.....	12,918,616	2,179,046	2,374,816	361,365	13,102,108	2,198,032	4,762,580	787,820
Sardines.....	9,262,288	548,665	3,772,878	250,573	10,155,568	615,244	9,509,700	625,167
Shrimp.....	455,985	79,695	369,131	77,271	859,824	142,042	824,776	179,599
Shellfish, other.....	93,097	14,552	58,603	10,093	112,498	18,897	195,801	26,758
Other.....	116,217	13,648	468,214	27,374	134,279	17,238	717,835	54,489
IMPORTS								
Canned beef.....	3,510,522	353,016	3,449,680	359,850	4,684,355	462,613	6,524,396	668,198
Condensed and evaporated milk (milk, condensed, etc.).....	110,687	5,039	55,093	2,851	236,222	10,889	129,822	8,950
Canned fish in oil: (fish in oil, etc.).....								
Sardines.....	2,751,893	362,273	1,598,692	258,433	5,110,037	673,679	3,343,331	523,106
Anchovies.....	211,383	68,972	179,456	85,411	374,626	120,973	371,538	173,329
Tuna.....	1,219,944	271,060	205,753	37,574	1,529,409	335,335	486,348	90,286
Other.....	57,673	16,419	41,100	13,022	95,058	28,639	80,760	22,587
Canned shellfish:								
Crab meat.....	1,103,209	362,304	296,666	92,408	1,220,185	394,975	716,969	237,483
Clams and oysters.....	74,118	11,751	39,903	9,271	127,007	21,749	97,025	23,080
Lobsters.....	36,555	12,643	20,677	8,427	54,927	19,724	34,449	14,134
Other canned fish.....	1,067,013	143,522	1,331,900	112,431	2,975,407	222,392	2,919,877	247,553
Canned vegetables:								
Peas.....	31,486	2,896	14,454	1,164	67,285	6,188	27,072	2,495
Mushrooms.....	57,320	16,879	61,758	16,262	103,116	29,048	171,278	44,985
Tomatoes.....	4,494,871	168,817	3,190,031	129,138	9,546,832	361,174	7,305,296	301,658
Tomato paste and sauce.....	950,016	62,062	738,220	50,117	1,580,817	108,752	1,467,834	102,553
Other.....	10,596	647	23,014	1,252	15,809	960	36,072	2,130
Canned pineapple, dutiable.....	295,670	12,517	408,431	20,884	791,774	31,551	954,317	44,182
Philippine Islands, free.....	2,378,456	115,144			2,378,456	115,144		

BILL TO AMEND TRADE MARK LAW**Lanham Measure Would Make Numerous Changes of Interest to Canners**

The House Committee on Patents has completed its hearings on the Lanham trade mark bill (H. R. 9041), which would make important changes in the existing trade mark laws.

The bill, which is comparable to a tentative draft presented at the 1937 meeting of the American Bar Association, would make unlawful the false or deceptive marking of goods or services, provides for registration of trade marks, etc. It extends registrability to descriptive or geographical marks that have become distinctive and omits the prohibition against the appropriation of emblems, etc. of fraternal or other organizations, as well as names of corporations. This is a radical change from the existing law. The bill also permits registration of service marks (including union labels and marks of association); collective marks (not defined), and provides that applications for registration when used by subsidiary or related companies shall so state, and such use shall be deemed exclusive and shall not affect the validity of registration. This use of the same mark by related companies is also a radical change from the old law where there was a tendency to declare a mark invalid if the mark was licensed to others.

Under the present practice, disclaimer of unregistrable matter usually resulted in the applicant being unable later to obtain a registration on the disclaimed matter. Under the new proposed law the Commissioner of Patents may require disclaimer of unregistrable matter without prejudice to applicant's right in the disclaimed matter or his right to register it later if it has become distinctive of the applicant's goods.

A further provision of the proposed law which is a radical change from the present practice is the one which permits the assigning of a trade mark without assigning the good will of a business. As in the case of present assignments of patents, the assignment would have to be recorded within three months to be valid against a subsequent bona fide purchaser without notice.

There are a number of provisions covering procedure, which deal with interferences, cancellations and oppositions.

Section 32 of the bill reads: "Sec. 32. It shall be unlawful to use any mark in commerce unless and until such mark has been deposited in accordance with this section."

This makes registration mandatory, is a radical departure from the old practice, and is one of the controversial features of the bill. Under the old practice the owner of a trade mark had common law rights based upon use, and registration gave benefits principally of a procedural nature; in other words, a registered trade mark was *prima facie* evidence of ownership, and the burden rested upon an infringer. Another advantage of registration resides in the fact that it tended to prevent adoption of the same mark by others, since the files of the trade mark bureau are ordinarily searched before a trade mark is adopted.

The compulsory feature of the proposed law is considered open to serious objection. It will impose additional expense upon those trade mark owners who do not care to register their marks; it will impose additional burdens; at the outset

the operation of this law would present some very difficult situations; and in some instances (where at present there is a concurrent user of the same trade mark in widely separated territories) it might well work a forfeiture of valuable trade mark rights with respect to one or the other owner.

On the other hand, after a mandatory system has once been established and been in operation for some time, it would have much to recommend it, for it would minimize some of the unfortunate situations that arise under the present practice. For instance, a person about to adopt a new trade mark could be definitely assured that he would have a valid trade mark merely by searching the trade mark records at the Patent Office. As it is, under the present system, frequently trade marks are adopted and registered in the belief that such adopter is the first person to ever use that mark, and then, after the mark has become a valuable asset of such person, it is discovered that someone else in a remote section has used that same trade mark but has not registered it.

The bill further prohibits the unauthorized importation of goods bearing registered trade marks or a simulation of a manufacturer's name, and penalizes use of false designation of origin or any false description.

The bill provides for reciprocal rights for foreign registrations.

Price Fixing by Rice Group Banned

The Federal Trade Commission has entered an order directing eight milling companies in California and their trade association, California Rice Industry, San Francisco, to cease and desist from fixing and maintaining uniform prices for rice grown in California, and from determining the quotas of the crops that millers may process, thereby restricting the sale of rice in interstate commerce. The Commission found that the prices charged by the milling companies for processed rice are uniform and fixed by agreement, as are the prices paid to the growers for paddy, which is unhusked rice. As a result of their pricing policies and other practices, the respondents have acquired a monopoly in the sale of rice grown in California, and competition in the industry has been restricted and suppressed, according to the findings.

Interest Continues in Library Survey

Canners are showing a well sustained interest in the inquiry of the Home Economics Division on school and public libraries. A number of firms have furnished the information for each of the communities in which they have branch plants. One reply to the questionnaire included a list of all the home economics teachers in a large city, to whom it was desired that the Division's literature be sent. One State canners' association is canvassing its members so that it can determine how much material will be required to cover the libraries in its territories.

Home Economics Division Field Work

On March 23rd Miss Black of the Home Economics Division addressed the women attending the annual Farmers' and Homemakers' Day at the Essex County Agricultural School

in Hathorne, Massachusetts. This is a vocational school training students for work in agriculture and home economics.

The women who attended the Field Day came from all parts of the county and they attended the sessions for women's activities while their husbands were attending the agricultural meetings. About 300 women were present at the meeting, and they were very much interested to hear about what the canning industry is doing to improve the quality of canned foods, and in the development of descriptive labeling.

On the same trip Miss Black spoke to the assembly of students at the Essex County Agricultural School, and the assembly of 400 girls at the Haverhill High School in Haverhill. In Newark, New Jersey, Miss Black spoke to the Homemaking section of the Contemporary Women's Club.

Miss Atwater spoke at the Pennsylvania Cannery Association meeting at State College, Pennsylvania, on March 23rd, describing the services that the Home Economics Division renders the industry, including its work with reference to descriptive labeling. Later that same afternoon she spoke to about 100 home economics students at Pennsylvania State College. About 10 members of the faculty were also present. This was an unusually alert group and they asked numerous questions on can sizes, labeling and related subjects.

Forecast of Freight Movement

Freight car loadings in the second quarter of 1938 are expected to be about 17.7 per cent below actual loadings in the same quarter of 1937, according to estimates compiled by the thirteen Shippers' Advisory Boards. On the basis of these estimates, freight car loadings of the twenty-nine principal commodities will be 4,989,844 cars in the second quarter of 1938, compared with 6,060,366 actual car loadings for the same commodities in the corresponding period last year.

Estimated loadings of canned goods (all canned food products, including catsup, jams, jellies, olives, pickles, preserves, etc.) are 39,263 cars as compared with actual loadings of 41,622 cars in the corresponding period of 1937, a decrease of 5.7 per cent.

Rural Retail Sales in February

Daily average sales of general merchandise in small towns and rural areas for February as compared with February, 1937, showed a decrease for all regions of the country, but the decline was relatively less in the Far West. Estimates of the Bureau of Foreign and Domestic Commerce, based on the dollar volume of rural chain store and mail order sales, indicate that sales in this region were about 1 per cent below February, 1937, while sales in the other three were down about 4 per cent each. These changes compare with a decrease in rural sales of about 3½ per cent for the entire country.

February Wholesale Sales Drop 15 Per Cent

The dollar volume of wholesale trade declined 15 per cent in February as compared with February, 1937, according to reports from 1,534 wholesalers to the Bureau of Foreign and Domestic Commerce. This was the fifth consecutive

month in which sales fell below the corresponding month of the preceding year, and in February sales, there was a larger decrease than any other month of this period.

Wholesale sales of groceries and foods except farm products, according to reports from 234 firms, declined 8.4 per cent as compared with February last year. Inventories of these firms at the end of February were 1.8 per cent below those of February, 1937.

Fruit and Vegetable Market Competition

Carlot Shipments as Reported by the Bureau of Agricultural Economics, Department of Agriculture

VEGETABLES	Week ending—			Season total to—	
	Mar. 26, 1937	Mar. 26, 1938	Mar. 19, 1938	Mar. 26, 1937	Mar. 26, 1938
Beans, snap and lima.....	184	310	298	4,970	4,410
Tomatoes.....	567	931	984	6,298	7,534
Green peas.....	124	27	76	1,014	1,526
Spinach.....	233	245	279	6,284	5,292
Others:					
Domestic, competing directly	4,483	3,503	4,699	71,047	71,084
Imports competing—					
Directly.....	47	44	75	712	826
Indirectly.....	29	69	95	1,553	2,205
FRUITS					
Citrus, domestic..	4,630	4,317	4,204	87,810	88,140
Imports.....	2	0	0	102	125
Others, domestic..	140	340	58	18,792	19,517

Australia May Can Grapefruit

The Leeton Cannery, central cannery for the Murrumbidgee Irrigation Area in New South Wales, has decided to experiment on a commercial scale with the production of canned grapefruit and grapefruit juice, according to the American trade commissioner at Sydney. If these plans develop, the Australian product, it is expected, would become an active competitor with American grapefruit in the United Kingdom.

CONTENTS

	PAGE
Congress summary	5489
Can size survey.....	5489
Wagner Act upheld	5490
Alaska fisheries agreement	5491
Sardine production in Chosen	5493
Canned food exports and imports	5494
Bill to amend trade mark law	5495
Price fixing by rice group banned	5495
Interest continues in library survey	5495
Home Economics Division field work	5495
Forecast of freight movement	5496
Rural retail sales in February	5496
February wholesale sales drop 15 per cent	5496
Fruit and vegetable market competition	5496
Australia may can grapefruit.....	5496